

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:11-HC-2241-FL

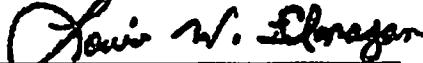
RICHARD A. MUTO,)
Petitioner,)
v.) ORDER
TRACY W. JOHNS,)
Respondent.)

Petitioner petitions this court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter is before the court on petitioner's motion for voluntary dismissal (DE # 13). An action may be dismissed voluntarily by petitioner without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment. See Fed. R.Civ. P. 41(a)(1). Otherwise an action shall not be dismissed on the petitioner's request except upon an order of the court. See Fed. R.Civ. P. 41(a)(2). At this point, respondent has not filed an answer or motion for summary judgment.¹ Based upon the foregoing, petitioner's motion for

¹ To the extent respondent's May 7, 2012, motion to dismiss, or in the alternative, motion for summary judgment (DE # 8) could be construed as a motion for summary judgment, the court finds good cause to allow petitioner's voluntary dismissal of this action, and finds that respondent will not be prejudiced by such dismissal.

voluntary dismissal (DE # 13) is GRANTED, and the action is DISMISSED without prejudice. All pending motions are DENIED as moot. The Clerk of Court is DIRECTED to close this case

SO ORDERED, this 15th day of August, 2012.


LOUISE W. FLANAGAN
United States District Judge